S.B.Civil Second Appeal No.200/2005

Mohan Lal vs. Deep Chand.

Date : 25.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Arun Kalla, for the appellant.

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Heard learned counsel for the appellant.

A suit for eviction was filed by the plaintiff/respondent against the defendant/appellant on the grounds of personal bonafide necessity and default in payment of rent by the tenant. The trial court decreed the suit of the plaintiff on both the grounds. The judgment and decree of trial court dated 29.5.2001 was challenged by the defendant/appellant by filing appeal which too was dismissed by the first appellate court vide judgment and decree dated 19.2.2005. Hence, this second appeal.

According to learned counsel for the appellant, the trial court determined the rent but the appellant could not deposit the rent and he submitted an application before the trial court and requested that the tenant be permitted to deposit the rent for the period from August, 1986 to September, 1995. This application was submitted in Court on 16.9.1995.

According to learned counsel for the appellant, even the plaintiff did not submit an application under Section

13(5) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act') for seeking any order of striking out of defence of the appellant. Since the defence of the appellant was not struck off by the trial court, therefore, there is no violation of Section 13 (5), therefore, the trial court should not have granted decree for eviction on the ground of default and should have allowed the benefit of first default to the appellant.

According to learned counsel for the appellant, it was mandatory duty of both the courts below that they should have decided the issue of partial eviction which is statutory requirement of law as provided under Second Part of Section 14(2). According to learned counsel for the appellant, the Hon'ble Supreme Court in the case of Rahman Jeo Wangnoo vs. Ram Chand and others reported in AIR 1978 SC 413 held, while dealing with the case under J. And K. Houses and Shops Rent Control Act, 1966 that the Proviso appended to Section 11(h) of the said Act mandates the Court to consider whether eviction of tenant from part of premises is to be ordered. The Hon'ble Apex Court held that even in absence of a specific pleading under proviso, the court has to act in compliance with the mandate and give a finding.

According to learned counsel for the appellant, in view of the above mandatory provisions of Section 14 of the Act, the first appellate court itself should not have decided the question of partial eviction and also should not have decided the issue of partial eviction without affording an

opportunity to prove the case of partial eviction by appellant tenant.

Learned counsel for the appellant further tried to submit that the two courts below committed serious error of law and they did not consider the evidence of the appellant where the appellant categorically stated that the plaintiff is residing at Calcutta. According to learned counsel for the appellant, this non-consideration of material evidence vitiates the finding of the courts below.

I have considered the submissions of learned counsel for the appellant and perused the record.

So far as the question of personal bonafide necessity of the plaintiff is concerned, that is a pure question of fact. The challenge to this finding is on the ground that the two courts below did not consider the appellant's evidence where he stated that the plaintiff is residing at Calcutta. It is clear from a bare reading of statement of the defendant that he stated that the plaintiff is residing at Calcutta which is contrary to his own pleadings. In the written statement itself, the appellant stated that the plaintiff is doing business in Kuchaman City. In cross examination, the appellant's witness D.W.1 Bhag Chand also very specifically admitted that the plaintiff is doing business of tax advising in Kuchaman City itself and there is no office available with the plaintiff for his work. Not only this, but the defendant's own witness DW1 Bhag Chand

very specifically admitted that Deep Chand is in need of the place for office but according to him, Deep Chand had several vacant place available. In view of the above, what the defendant stated in his statement about the plaintiff's residing at Calcutta could not have been even worth consideration as that statement was without pleading.

So far as the decree on the ground of default is concerned, it is clear that the defendant himself admitted in writing before the trial court itself, that he did not pay the rent in time. The defendant sought permission to deposit the rent from August, 1986 to September, 1995, therefore, it is admitted case of non-payment of monthly rent during trial of the suit which is required to be paid month by month and the trial court had no jurisdiction to condone such delays. As per statutory provision of law under Sections 13(3) and (4), determined rent and monthly rent during the pendency of the suit could have been deposited within the maximum period of 15 days and 90 days. This provision has been held to be mandatory by the Hon'ble Supreme Court. The trial court, therefore, was fully justified in decreeing the suit of the plaintiff on the ground of default of the defendant because of the simple reason that Section 13(1)(a) is a ground for eviction of the tenant in case, the tenant is defaulter in payment of rent for six months and he can avoid the decree for eviction only by making payment of the determined rent and monthly rent as required under Sections 13(3) and (4) of the Act of 1950 and in this case, the appellant has not

availed that benefit. Therefore, the two courts below have not committed any error of law in decreeing the suit of the plaintiff.

So far as the contention of the learned counsel for the appellant tenant that two courts below have committed serious error of law in not framing the issue regarding partial eviction and further committed error of law by not allowing opportunity to lead evidence is concerned, it is clear from the facts mentioned in the judgment of the appellate court that the appellate court considered the measurement of the shop and found that the suit shop is having width of about 9 feet 6 inches. The depth of the suit shop is 17 to 19 feet. It is submitted by learned counsel for the appellant also that the plaintiff raised construction over the disputed shop of another room and constructed stair case behind the shop in dispute. In view of the above, it is clear that the suit shop has the width of 9 feet only and in case, it is divided, the maximum width of the gate can be 4 feet 6 inches only for both the parties. In case, the width of any of the person is reduced from less than 4 feet 6 inches, then that cannot be appropriate for business activities. So far as the contention of learned counsel for the appellant that the suit shop has a door in the rear side is concerned, that question was not even raised by the appellant tenant before the first appellate court.

In view of the above facts, if the first appellate

court has rejected a finding of fact on the basis of facts available on the record, the question of sufficiency and insufficiency of evidence cannot be a ground for interference in second appeal in a case where the plaintiff proved his case for personal bonafide necessity for his office and where the defendant's own witness admitted that the plaintiff's need is there for opening an office.

In view of the above, I do not find any substantial question of law involved in this appeal. Hence, this second appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya